

LABOUR AND EMPLOYMENT DEPARTMENT

The 21st November, 1974

No. 10685-4Lab-74/35548.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Fritz & Singh (P) Ltd., Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 164 of 1970
between

Shri Radhey Kishan and the management of M/s Fritz & Singh (P) Ltd., 14/4, Mathura Road,
Faridabad.

Present:—

Shri Blim Singh, for the workman,
Shri R.D. Jain, for the management,

AWARD

Shri Radhey Kishan workman concerned was in the service of M/s Fritz & Singh (P) Ltd., 14/4, Mathura Road, Faridabad since 1st December, 1968 as a Head Dye Incharge at Rs. 270 P.M. The management terminated his services with effect from 15th May, 1970 allegedly by way of victimisation on account of his trade union activities. Feeling aggrieved, he raised a demand for reinstatement but without any success. This gave rise to an industrial dispute. He gave demand notice dated 19th April, 1970, which forms part of the present reference, whereupon conciliation proceedings were started. The management did not show any willingness to take him back on duty and the conciliation ended in failure.

On receipt of the failure report from the Conciliation officer, the Governor of Haryana referred the dispute for adjudication to this court,—vide order No. ID/FD/432-A-70/29288-92, dated 18th September, 1970, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, with the following term of reference.

“Whether the termination of services of Shri Radhey Kishan was justified and in order? If not, to what relief is he entitled?”

The parties put in their respective pleadings. Shri Radhey Kishan workman concerned reiterated his claim for reinstatement and payment of back wages as earlier raised through the demand notice leading to the present reference alleging that there was no fault of his and the management had wrongfully terminated his services only by way of victimisation. On the other hand, the management contested his claim on the ground that he had been guilty of mis-conduct and two charge-sheets had been served upon him and the impugned action of dismissal from service was taken against him after holding a proper enquiry. In his replication, the workman controverted the above allegations and pleaded that no proper enquiry had been held and he was not given adequate opportunity to defend himself.

From the pleadings of the parties, the issue which arose for determination in the case was precisely the same as per the term of reference stated above.

The management has relied upon the enquiry proceedings which have been produced in original along with the documents relating thereto. Five witnesses have been examined including the Enquiry Officer Shri S.L. Gupta, M.W.1, Shri B.S. Bragat, Branch Manager, M.W.2, Shri F. G. P. Trinidad, Security Incharge M.W.3, Shri Jawahar Singh, Helper, M.W.4 and Shri Basant Ram, Chowkidar M.W.5.

Shri Radhey Kishan workman concerned has made his own statement as W.W.1 besides examining a co-worker Shri Matru Pershad, Turner W.W.2. The documentary evidence relied upon by him consists of three letters addressed to the Enquiry Officer, as well as, the management under registered cover and certificate of posting Exs. W.1.W, 2 and W. 3.

The case has been fully argued on both sides and I have given a considered thought to the facts on record. As already pointed out, the case for the management is that the present workman was guilty of two charges of misconduct, firstly that he had misbehaved towards the Supervisor Shri K. G. Gupta and threatened his life on 27th February, 1970 and secondly by stopping the Car of the Factory Manager by placing his cycle in front of it. The question which is of vital importance and arises for consideration in the case is whether a proper enquiry had been held into the aforesaid allegations in respect of which two separate charge-sheets were allegedly given

to the workman on 2nd March, 1970 and 16th March, 1970, respectively. After a close and careful scrutiny of the evidence on record, I find that no proper enquiry had been held and the workman was not given adequate opportunity of defending himself. The enquiry record, no doubt shows that notice was given to him by the Enquiry Officer and he had appeared on the first date of enquiry fixed for 20th March, 1970 when the enquiry was postponed to 28th March, 1970 to enable him to prepare his case. On 28th March, 1970 the statements of the witnesses were recorded by the Enquiry Officer *ex parte* against the workman and the enquiry was closed on 6th April, 1970 with regard to the first charge-sheet. The enquiry in respect of the second charge-sheet was started on 27th April, 1970 and concluded on the same day. It has been alleged that the workman had intentionally not appeared in the enquiry proceedings in spite of due service. The contention is not warranted by the facts on record and it does not stand to reason that this workman who had appeared on the first date of enquiry fixed for 20th March, 1970 and requested for time to prepare his defence would deliberately absent himself and not take part in the enquiry proceedings. On the other hand, there are three letters Exs. W.1, W.2 and W.3 on record which he had addressed to the Enquiry Office as well as the management that he was not allowed to enter the factory premises and take part in the enquiry being held against him. He had asked for the copies of the statements of the witnesses examined by the Enquiry Officer in his absence but the same were not supplied to him. He was not given any opportunity to produce his defence, so much so, that even his own statement was not recorded by the Enquiry Officer. A perusal of the whole record of the enquiry proceedings gives the impression that it was held at the back of the worker without affording him proper opportunity of defending himself and as such it was no enquiry in the eye of law. The first charge of threatening the life of the Superior Officer was no doubt of a serious nature but in all fairness and justice to the workman concerned he should have been given reasonable and adequate opportunity of defending himself to meet the charge.

As far the second charge of blocking the way of the Factory Manager by placing the cycle in front of his car as is clear from the photograph Ex. M.W. 2-1, the explanation of the workman is that he had gone to the factory on that day to demand his wages and for that reason he had stopped the car of the Factory Manager because the wages were not being paid to him and he did not have any intention of misbehaving towards the Factory Manager or causing any inconvenience or harm to him. Shri Bhim Singh Yadav, General Secretary of the Union who also submitted this photograph has filed an affidavit that he had requested the Enquiry Officer to appear on behalf of the workman but he was not allowed to do so. The mere stopping of the car by the workman in the manner as depicted in the photograph itself cannot be considered as a misconduct on his part. He was not allowed entry into the factory premises. His wages were not being paid in spite of demands. Out of sheer frustration he had resorted to his means of representing his grievance to the Factory Manager, which in the circumstances, could not be considered as an act of violence, disobedience or wilful insubordination on his part particularly when he did not mean any harm or insult to the officer concerned.

It would thus appear that the facts and the circumstances of the case, as discussed above, did not justify the dismissal from service of the present workman. There are admittedly no Standing Orders of the Company. The workman was, therefore, covered by the Model Standing Orders enforced by the State Government. There had been no compliance of the requirements of the law as provided in the Model Standing Orders in holding the enquiry against the workman by giving him reasonable and proper opportunity of defending himself and the principles of natural justice had clearly been violated, and that being so, the so-called enquiry has got to be held as being vitiated and deserves to be set aside. No request has been made on behalf of the management to lead fresh evidence on merits, if the enquiry is set aside. Shri K. G. Gupta the main witness has not been examined in the case.

Lastly, it has been argued on behalf of the management that the demand notice should have been given by the workman himself and not through the Union and, therefore, there was no dispute as contemplated under section 2-A of the Industrial Disputes Act, 1947. I am afraid the contention is without force. No issue has been claimed on this point nor was any such plea raised in the written statement originally filed. From the pleadings of the parties the only issue that arose for determination was as per the term of reference on which they have led their evidence. This plea has, in fact, been taken only at the time of the final arguments of the case and as such the management cannot be heard to say that there was no industrial dispute within the meaning of the law.

So, judged from whatever angle, the termination of the services of the workman concerned cannot be held to be justified and in order. The issue is, therefore, decided in his favour and he is entitled to reinstatement with continuity of his previous service and full back wages. The award is made accordingly but without any order as to costs.

Dated the 11th November, 1974.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2614, dated 15th November, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

M. SETH, Comm. and Secy.